

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3366 of 1998

Date of decision: 20-8-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MARIUM SIDDI

Appearance:

Mr. C.C. Bhaya for Appellants

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/08/98

Heard the learned counsel for the appellants.

This appeal is directed by the appellants against the judgment and decree passed by the Civil Judge (S.D.), Jamnagar, on 31st January, 1998 in Regular Civil Suit No.35 of 1985, under which a sum of Rs.15,000/- with interest at the rate of 6% per annum from the date of suit and cost has been ordered in favour of the plaintiff - respondent.

2. The respondent -plaintiff, mother of deceased Umar Sidi who expired on 25th January, 1984 in an accident has filed the suit for recovery of Rs.1 lac as compensation from the appellants-defendants. She has come up with the case that her deceased son was brought to the Irwin Hospital for treatment of injury which he received accidentally due to wall falling at her place. But during the treatment at Irwin Hospital, he died. His dead body was taken to cold storage room to be kept during the night for doing port mortum next day. During the night, plaintiff has stated, some one has played mischief and stollen the eyes from the dead body.

3. The suit has been contested by the appellants defendants and they denied any kind of negligence on their part. It has further been pleaded that there was a watchman keeping watch over the premises and nothing was found as pleaded by the plaintiff during the night of 25th and 26th January, 1984. Next defence has been taken that the eyes of the deceased were of no use to any body after two hours from the death and since the dead body was received in the cold storage room after three hours of death, the whole case made out by the respondent -plaintiff is false and frivolous.

4. Learned trial court, after considering the evidence produced by both the parties had recorded the finding of fact that the eyes of the deceased, i.e. son of the respondent -plaintiff, was stollen during the night of 25th and 26th January, 1984. It is a fact on which the learned counsel for the appellant is unable to satisfy this court otherwise that the dead body remained in the custody of the Government Hospital. During the custody of the dead body if any limb or part of the body is removed, certainly the relatives of the deceased are entitled to compensation for the loss of the limb or part of the body. Learned trial court, after appreciating the evidence of the parties, has not committed any illegality in deciding the matter against the defendants, and

rightly the suit has been decreed for Rs.15,000/with interest and cost. A very nominal amount has been awarded as compensation as against the claim of Rs.1 lac. Still it is really shocking that the State Government in such matters has felt aggrieved.

5. In the result this appeal fails and the same is dismissed.

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